IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11016 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TARUNABEN B BHAVSAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11016 of 2002

MR PV HATHI WITH MS KHYATI P HATHI for Petitioner No. 1

MRS FALGUNI PATEL, AGP, for Respondent No. 1

MR JB PARDIWALA for Respondent No. 2

RULE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 06/02/2004

ORAL JUDGEMENT

1. The matter is listed today for fixing date of

hearing. While requesting for the same, Mr.P.V.Hathi, learned advocate appearing for the petitioner, submitted that the matter involves a very short question and that too duly covered by the judgments of this Court, not only of the learned Single Judges, but also that of the Division Bench. That being so, at the request of the learned advocates for both the sides, the matter is taken up for final hearing today itself.

2. The short facts giving rise to the petition are that the petitioner was appointed as a Clerk after being selected at Valia in the Court of Civil Judge by the order dated 22nd January 1988 where she reported for duty on 1st February, 1988. Thereafter, by office order No.178/95, the Principal Judge, City Civil Court posted the petitioner on his establishment as per directions of the High Court sanctioning inter-District transfer of the petitioner on certain conditions, copy of the order is produced at Annexure B to the petition. The petitioner joined the establishment of the City Civil Court on 1.9.95. The petitioner appeared for the Higher Standard Departmental Examination and was declared 'pass' on 20th November 1988 whereby became eligible for promotion to higher post of Assistant Superintendent. On 23rd February, 2000, the Registrar of the City Civil Court sent papers of the petitioner, for pay fixation for giving her higher grade scale, to the Local Fund Office, Ahmedabad.

3. The petitioner is aggrieved as the benefits of 9 year higher grade are denied to the petitioner by the Local Fund Office on the ground that the petitioner having obtained inter-district transfer had lost her seniority and therefore she is not eligible for the 9 year higher grade benefits vide GR dated 16th August 1994. The learned advocate Mr.Hathi submitted that the Local Fund Office refused to accept the judgment of the High Court, which was pointed out by the petitioner. The petitioner was asked to obtain judgment by filing a writ petition. That is why the petitioner is before this Court.

4. It can not be disputed that the issue involved in this matter is already adjudicated by this Court in the matter of Kanaksinh M. Parmar v. Collector, Junagadh & ors. in Special Civil Application No.5403 of 1996 (Coram: Mr.Justice S.K.Keshote) decided on 10th September 1999. Still the matter is contested by filing an affidavit in reply on behalf of respondent No.3 wherein, along with various other contentions, it is also contended that another learned single Judge of this Court

has taken a different view in Special Civil Application No.1179 of 2002 with Special Civil Application No.1180/02 and Special Civil Application No.1183/02.

5. Mr.Hathi, the learned advocate appearing for the petitioner placed on record a copy of the judgment and order dated 5th May, 2003 of a Division Bench of this Court consisting of the Acting Chief Justice Mr.Justice J.N.Bhatt, as he then was, and Mr.Justice K.A.Puj in Letters Patent Appeal No.229 of 2003, 230 of 2003 and 231 of 2003 in Special Civil Application Nos.1179, 1180/02 and 1183/02. He submitted that in view of that the judgment which is relied on by respondent No.3 in his affidavit in reply is no longer holds the field as the same is already quashed and set aside by a Division Bench of this Court. It is also submitted that the same view is taken by another learned single Judge of this Court (Coram: Mr.Justice P.B.Majmudar) in Special Civil Application No.9295 of 2003 decided on 16th September, 2003 and incidentally it is in the matter of a Clerk from the same establishment to which the petitioner belongs i.e. City Civil Court, Ahmedabad. Mr.Hathi, the learned advocate also submitted that in yet another matter a Division Bench of this Court consisting of Hon'ble Chief Justice and Mr. Justice J.N.Bhatt in Letters Patent Appeal No.761 of 2003 in Special Civil Application No.10469 of 1999 decided on 20th December, 2003 has taken the same view.

6. In view of the above, this court restrains itself from elaborate disussion of law for the reasons recorded by the learned single Judges and the Division Bench, the present petition is allowed. Rule is made absolute with no order as to costs.

7. Taking into consideration the fact that the petitioner is longing for the benefits which otherwise would have been granted to him in view of the law declared on the point by this Court, it is directed that the authorities shall expedite the grant of benefits to the petitioner and shall see to it that the same is granted to her at the earliest but in no case later than 31st March, 2004.

(Ravi R.Tripathi, J.)
(vjn)